

Appl. No. 09/663,315  
Response to Office Action of May 8, 2006

PATENT  
Docket No. D099175US  
Customer No. 000024737

### REMARKS

The undersigned has conducted a thorough review of the application to understand the issues at hand. Accordingly, claims 1-31 have been previously cancelled. By this amendment, claims 32, 39 and 40 have been amended. Claims 32-40 remain in the application. Support for the amendments to the claims is identified herein below. No new matter has been added. This application has been carefully considered in connection with the Examiner's Action. Reconsideration, withdrawal of the final action, and allowance of the application, as amended, is respectfully requested.

#### Rejection under 35 U.S.C. §103

Claim 32 recites a wireless network comprising: a base station; and a terminal for exchanging user data and control data with the base station in dependence upon a plurality of persistency probabilities for assigning various transmissions capacities by the base station for at least one data packet, wherein the terminal is operable to transmit a first reservation request for a first time to the base station in dependence on a first persistency probability, the first reservation request being associated with a first data packet, further wherein the base station sends the first persistency probability periodically over a broadcast channel, wherein, only after a transmission of a rejection message sent by the base station over the broadcast channel corresponding to the first reservation request, the terminal is further operable to transmit the first reservation request for at least one additional time to the base station in dependence on a second persistency probability, wherein the rejection message is linked to a rejected preamble of the respective reservation request such that the second persistency probability is determined differently depending on the rejected preamble, and further wherein the base station sends the second persistency probability non-periodically, different from the first probability, so as not to use a capacity of the broadcast channel unnecessarily, wherein, during a defined space of time after a complete transmission of the first data

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packet by the terminal to the base station, the terminal is further operable to transmit a second reservation request in dependence on a third persistency probability, the second reservation request being associated with a second data packet, further wherein the base station sends the third persistency probability periodically over the broadcast channel, and wherein, in response to the terminal neither receiving an assignment message nor the rejection message corresponding to the first reservation request from the base station after a step-by-step increase of a transmission power to a maximum value by the terminal over at least two transmissions of the first reservation request by the terminal to the base station, the terminal is further operable to transmit the first reservation request for at least one additional time to the base station in dependence of a fourth persistency probability, further wherein the base station sends the fourth persistency probability periodically over the broadcast channel. The amendments to claim 32 (as well as amendments to claims 39 and 40) are fully supported by the specification and the drawings as originally filed, for example, including at least on page 3, lines 6-10 and 12-17; page 7, lines 11-12; page 10, lines 4-5 and 26-30; page 11, lines 30-34; page 12, lines 17-22; and page 13, lines 2-3.

Claims 32 and 35-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,374,099 to **Bi et al** in view of U.S. Patent No. 5,537,414 to **Takiyasu et al**, and further in view of U.S. Patent No. 5,142,533 to **Crisler et al**. With respect to claim 32, application traverses this rejection on the grounds that these references are defective in establishing a prima facie case of obviousness.

As the PTO recognizes in MPEP § 2142:

*... The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness...*

It is submitted that, in the present case, a prima facie case of obviousness has not been factually supported for the at least the following reason.

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### **Even When Combined, the References Do Not Teach the Claimed Subject Matter**

The Bi et al, Takiyasu et al, and Crisler et al patents cannot be applied to reject claim 32 under 35 U.S.C. § 103 which provides that:

*A patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains ... (Emphasis added)*

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. Neither Bi et al, Takiyasu et al, and Crisler et al teaches "wherein, only after a transmission of a rejection message sent by the base station over the broadcast channel corresponding to the first reservation request, the terminal is further operable to transmit the first reservation request for at least one additional time to the base station in dependence on a second persistency probability, wherein the rejection message is linked to a rejected preamble of the respective reservation request such that the second persistency probability is determined differently depending on the rejected preamble, and further wherein the base station sends the second persistency probability non-periodically, different from the first probability, so as not to use a capacity of the broadcast channel unnecessarily" as is claimed in claim 32.

Therefore, it is impossible to render the subject matter of claim 32 as a whole obvious, and the explicit terms of the statute cannot be met. The rejection under 35 U.S.C. §103 should be withdrawn.

Accordingly, claim 32 is allowable and an early formal notice thereof is requested. Dependent claims 35-38 depend from and further limit independent claim 32 and therefore are allowable as well. The 35 U.S.C. § 103(a) rejection thereof has now been overcome.

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Claims 33 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,374,099 to **Bi et al** in view of U.S. Patent No. 5,537,414 to **Takiyasu et al**, in view of U.S. Patent No. 5,142,533 to **Crisler et al**, and further in view of U.S. Patent No. 6,621,807 to Jung et al. With respect to claims 33 and 34, application respectfully traverses this rejection for at least the following reasons. Dependent claims 33 and 34 depend from and further limit independent allowable claim 32 and therefore are allowable as well. Accordingly, the 35 U.S.C. § 103(a) rejection thereof has now been overcome.

Claims 39 and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,374,099 to **Bi et al** in view of U.S. Patent No. 5,142,533 to **Crisler et al**. With respect to claims 39 and 40, application respectfully traverses this rejection for at least the following reasons. As presented herein, claims 39-40 contain limitations similar to those contained in claim 32. Accordingly, claims 39 and 40 are believed allowable over **Bi et al** in view of **Crisler et al** for at least the same reasons as stated herein with respect to claim 32. Accordingly, claims 39 and 40 are allowable and an early formal notice thereof is requested.

### Conclusion

Except as indicated herein, the claims were not amended in order to address issues of patentability and Applicants respectfully reserve all rights they may have under the Doctrine of Equivalents. Applicants furthermore reserve their right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or a continuation application.

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It is clear from all of the foregoing that independent claims 32, 39 and 40 are in condition for allowance. Dependent claims 33-38 depend from and further limit independent claim 32 and therefore are allowable as well.

The amendments herein are fully supported by the original specification and drawings as discussed herein, therefore, no new matter is introduced.

Withdrawal of the final action and issuance of an early formal notice of allowance of claims 32-40 is requested.

Respectfully submitted,

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6/19/06

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